
(2014) 04 AP CK 0115

In the Andhra Pradesh High Court

Case No : Criminal Petition Nos. 2891 of 2011 and 3326 of 2011

Shaik Shammu

APPELLANT

Vs

Shaik Salma

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 494, 498-A

Citation : (2014) 2 ALT(Cri) 244

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor representing the State. There is no representing for the first respondent-de facto complainant. This Criminal Petition is filed to quash the entire proceedings in CC. No. 414 of 2009 on the file of the Judicial Magistrate of First Class, Giddalur, Prakasam District.

2. The brief facts of the case which is sought to be quashed may be stated as follows:-The marriage of the first respondent Shaik Salma was performed with the first accused Shaik Masrood on 28-10-2007 and the marriage was consummated. It is alleged that the first accused received an amount of Rs. 1,00,000/-(Rupees one lakh only) and gold articles as dowry at the time of marriage, but since six months after the marriage, he started harassing the de facto complainant for additional dowry. The de facto complainant, it is said that by convincing her parents brought one pair of gold ear studs from her parents and gave them to the first accused. Thereafter, the first accused and the petitioners looked after her properly for some time and again started harassing her for additional dowry. It is also alleged that her parents-in-law and sisters-in-law were also harassing her for additional dowry, on that she left the matrimonial home and came to her parents house one year prior to the lodging of the

complaint.

3. It is further alleged that all the accused i.e., petitioners in both the cases performed the marriage of A1 with A4 (first petitioner in Criminal Petition No. 2891 of 2011) during the subsistence of the marriage of the de facto complainant with the first accused. Basing on the report lodged by the de facto complainant, a case in Crime No. 129 of 2009 was registered by the police of Cumbum Police Station for the offences punishable under Sections 498-A and 494 of I.P.C., and after completing the investigation, they filed the charge sheet.

4. Criminal Petition No. 3326 of 2011 is filed by the, petitioners-accused Nos. 2 and 3 who are the parents of A1 and Criminal Petition No. 2891 of 2011 is filed by the petitioners-accused Nos. 4 to 9.

5. The allegation against the petitioners in Criminal Petition No. 2891 of 2011 is that they performed the bigamous marriage of the first accused with the first petitioner-A4. No details relating to the marriage have been furnished either in the complaint or in the statements of witnesses recorded by the police u/s 161 of Cr.P.C.

6. However, the crucial question is as to whether even if the first accused married the 4th accused during the subsistence of first marriage with the de facto complainant, would it be an offence punishable u/s 494 of I.P.C.

7. Reliance is placed by the learned counsel appearing for the petitioners on Lily Thomas, Vs. Union of India and Others, , wherein, it is held that there is a vital difference between Mahommedan Law and other personal laws. Prosecution u/s 494 of I.P.C., in respect of a second marriage under Mahommedan Law can be avoided only if the first marriage was also under the Mahommedan Law and not if the first marriage was under any other personal law where there was a prohibition on contracting a second marriage in the life time of the spouse.

8. In Shaik Pakeer Ahammed and others v. State of A.P. and another 2006 (2) ALT (Crl.) 188 (A.P), the learned Single Judge of this Court held that in view of the personal law of the Muslims, a second marriage of the husband not an offence u/s 494 of I.P.C.

9. In the instant case, the marriage of the de facto complainant with the first accused was performed as per the Muslim personal law and the second marriage of the first accused with the fourth accused was also allegedly performed as per the Muslim personal law. Therefore, the ingredients of Section 494 of I.P.C., are not attracted against any of the accused.

10. As regards the offence u/s 498-A of I.P.C., the allegation regarding treating the de facto complainant with cruelty and causing harassment in connection with additional dowry, is in fact made against the first accused and only a casual reference was made to the petitioners in Criminal Petition No. 3326 of 2011 i.e., father and mother of the first accused without making any specific allegations. It is only alleged that the parents of the first accused and his sisters were also

harassing for additional dowry. In the absence of any specific allegations, if the petitioners in Criminal Petition No. 3326 of 2011 are made to face the trial, it is nothing but abuse of process of law.

11. Thus, in both the Criminal Petitions, the petitioners made out a clear case for quashment. Consequently, the entire proceedings in C.C. No. 414 of 2009 on the file of the Judicial Magistrate of First Class, Giddalur are quashed against the petitioners in both the cases. Accordingly, the Criminal Petitions are allowed. The Miscellaneous Petitions pending if any shall stand closed.